### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

DAVID JAROSLAWICZ, i and on behalf of all others s situated,	•	Case No. 1:15-cv-00897-EJW
	Plaintiffs,	Honorable Evan J. Wallach
v.		Affidavit of Kenneth A. Elan
M&T BANK CORPORATI	ON, et al.,	
	Defendants.	
STATE OF NEW YORK	)	
COUNTY OF NASSAU	) ss: )	

#### KENNETH A. ELAN, being duly sworn, deposes and says:

I am an attorney duly admitted to practice law in the State of New York. I submit this affidavit in order to provide the Court with further information as to charitable donations I made in 2015. At the outset, I wish the Court to note that I spent this past winter in Florida and did not return to my home in New York until the last week of April. During the time I was away, I had no access to papers pertaining to my legal practice including checkbooks and ledgers from prior years. At no time was it my intention to shirk from my duty to provide the Court with additional documents or information pertaining to the donation I made to the

Bridgewater JCC. Nevertheless, I apologize for failing to provide information pertaining to charitable donations I made in 2015 in advance of the most recent hearing before Your Honor.

- 2. I have been a sole practitioner since 1986. I have always filed a joint tax return with my wife. My business income/expenses are shown on Schedule C of our return. As a sole practitioner, it has been my custom to make donations out of my Attorney Business Account as well as my joint (personal) account with my wife. On some occasions, I have made donations using a credit card too. The information below is the result of a review of my 2015 Attorney Business Account ledger. The ledger memorializes the checks I wrote out of the account. Parenthetically, my business records from 2015 (including bank statements and canceled checks) were discarded at the end of 2022. This was in keeping with my duty as an attorney, to retain records for seven (7) years.
- 3. I would have the Court note that I did not foresee the possibility that I would be required to produce these checks (in addition to the check payable to Bridgewater which was provided). In retrospect, I can see now how this was shortsighted. Below is the list of donations made in 2015 (in addition to the one made to Bridgewater JCC). Copies of the respective entry in my ledger are annexed as cumulative Exhibit A:

Check No. 1011 dated May 12, 2015, payable to Chai Lifeline in the amount of \$100.00;

Check No. 1028 dated July 7, 2015, payable to the order of Glen Cove Library in the amount of \$100.00;

Check No. 1029 dated July 9, 2015, payable to the order of We Care Fund in the amount of \$200.00;

Check No. 1032 dated July 21, 2015, payable to the order of Thirteen/WNET in the amount of \$100.00;

Check No. 1065 dated November 2, 2015, payable to the order of Multiple Sclerosis Society in the amount of \$100.00; and

Check No. 1073 dated November 16, 2015, payable to the order of Chai Lifeline in the amount of \$100.00.

Should the Court wish to view and inspect the entire (original) ledger, I am prepared to produce it for *in camera* inspection.

4. I also found a ledger from my joint (personal) account with my wife where I wrote Check No. 9363 dated September 25, 2015, payable to the order of Community Synagogue in the amount of \$118.00. A copy of the entry in the ledger is annexed as Exhibit B. This ledger does not cover all checks written out of the joint

account. However, as of the date hereof, I am unable to find any other 2015 ledger from my joint account.

- 5. I have no doubt that there were additional donations made by me (and, in some cases, by my wife). My certainty is based on a review of my 2015 federal income tax return. The returns show total donations of \$2,597. A copy of the pertinent page from my federal tax return is annexed as Exhibit C. These donations were, in all likelihood, made out of my personal account or by credit card since, to the best of my knowledge, I have listed all of the donations made out of my business account in 2015.
- 6. I have been in contact with Citibank where I maintain my business and personal savings and checking accounts. I was advised today that it will take the bank 5-7 business days to respond to my request for production of the checks referred to in the preceding paragraph. Needless to say, assuming Citibank produces the checks I will provide a supplemental affidavit to the Court with copies of the checks annexed.
- 7. As stated in my prior affidavit filed with the Court, my donation to the Bridgewater JCC was not out of the ordinary. I have made numerous donations over the years to Jewish and other charities. Moreover, as was the case with my donation to the Bridgewater JCC, several of the donations were made at the request of friends

and colleagues. Annexed as Exhibit D are copies of checks written out of my Attorney Business Account during the period 2016-2021 reflecting charitable contributions I made over the last several years (and before the Bridgewater check became an issue in 2022). Below is a breakdown of the payees of those checks:

2016: UJA Federation; Community Chest of Port Washington;

2017: Cycle for Survival; Chai Lifeline; Port Washington Community Chest; We Care Fund; Planned Parenthood; Thirteen Associates; Save the Sound; UJA Federation;

2018: UJA Federation; University of Baltimore Foundation; Shimon and Sara Birnbaum JCC; Chai Lifeline;

2019: Tree of Life; Wilderness Society; Planned Parenthood; Cycle for Survival; Scott J. Beigel Memorial Fund; ASPCA; Wilderness Society; We Care Fund; Community Chest of Port Washington; Chai Lifeline;

2020: Sierra Club; Planned Parenthood; John A. Reisenbach Foundation; Community Mainstreaming; Thirteen/WNET; UJA Federation of New York; US Holocaust Museum; University of Baltimore; Community Chest of Port Washington; and

2021: Camp Simcha; Community Chest of Port Washington; Sierra Club; Friends of New York Public Library; Coalition to Save Hempstead Harbor; Temple Bethel Brotherhood; Planned Parenthood; WNET/Thirteen.

- 8. Furthermore, in order to dispel any remaining concerns, I am prepared to appear before the Court and testify as to my donation to the Bridgewater JCC and/or any related issue.
  - 9. Further your deponent sayeth not.

KENNETH A. ELAN

Sworn to before me this

day of June 202

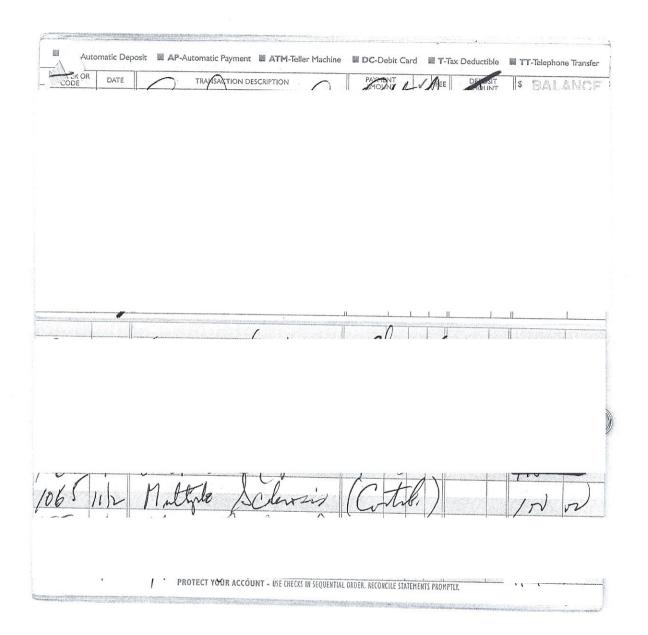
Notary Public

ROBERT I ELAN NOTARY PUBLIC, STATE OF NEW YORK Registration No. 02EL4650898

Qualified in Nassau County
My Commission Expires 12 3 7

## Exhibit A

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### Exhibit B

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√ Track Your Expenses:	9363
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# Exhibit C

#### Case 1:15-cv-00897-EJW Document 212 Filed 06/12/23 Page 15 of 46 PageID #: 10407

-DULE A rm 1040)

#### Itemized Deductions

OMB No. 1545-0074

▶ Information about Schedule A and its separate instructions is at www.irs.gov/schedulea.

Attachment

Department of the Treasury Internal Revenue Service

Attach to Form 1040. Sequence No Your social security number Name(s) shown on Form 1040 KENNETH & JOCELIN ELAN Caution: Do not include expenses reimbursed or paid by others. 1 1 Medical and dental expenses (see instructions) Medical Enter amount from Form 1040, line 38 and Multiply line 2 by 10% (.10). But if either you or your spouse was Dental born before January 2, 1951, multiply line 2 by 7.5% (.075) instead 3 0 Expenses 4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-State and local (check only one box): Taxes You 5 X Income taxes, or Paid General sales taxes b 6 Real estate taxes (see instructions) 7 Personal property taxes Other taxes. List type and amount 8 9 Add lines 5 through 8 10 10 Home mortgage interest and points reported to you on Form 1098 Interest 11 Home mortgage interest not reported to you on Form 1098. If paid to the You Paid person from whom you bought the home, see instructions and show that person's name, identifying no., and address Note: Your mortgage interest deduction may 11 be limited (see 12 Points not reported to you on Form 1098. See instructions for 12 instructions). special rules . 13 13 Mortgage insurance premiums (see instructions) 14 Investment interest. Attach Form 4952 if required. (See 14 instructions.) 15 15 Add lines 10 through 14 Gifts by cash or check. If you made any gift of \$250 or more, 2,597 Gifts to 16 see instructions Charity 17 Other than by cash or check. If any gift of \$250 or more, see If you made a 17 instructions. You must attach Form 8283 if over \$500 gift and got a 18 18 Carryover from prior year benefit for it, 2,597 19 see instructions. 19 Add lines 16 through 18 Casualty and 20 20 Casualty or theft loss(es). Attach Form 4684. (See instructions.) Theft Losses Unreimbursed employee expenses—job travel, union dues Job Expenses job education, etc. Attach Form 2106 or 2106-EZ if required. and Certain (See instructions.) Miscellaneous 22 Deductions 22 Tax preparation fees 23 Other expenses—investment, safe deposit box, etc. List type and amount 23 See Statement 24 24 Add lines 21 through 23 25 Enter amount from Form 1040, line 38 26 26 Multiply line 25 by 2% (.02) 27 27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-Other—from list in instructions. List type and amount Other 28 Miscellaneous Deductions 29 Is Form 1040, line 38, over \$154,950? Total No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. 29 Itemized Yes. Your deduction may be limited. See the Itemized Deductions Deductions Worksheet in the instructions to figure the amount to enter. 30 If you elect to itemize deductions even though they are less than your standard

### Exhibit D

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EOLR401N 1076 0060 CFM033 07 160521 PAGE 00002 OF 00002

Statement Period: Apr 22 - May 20, 2016 Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered

checks will appear first. Non-check items will appear last.

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Check images for account # 4



Ck Date: 04/25/2016 Ck No: 1117 Amt: \$900.00

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EOLR401N 1076 0060 CFM033 07 160622 PAGE 00002 OF 00002

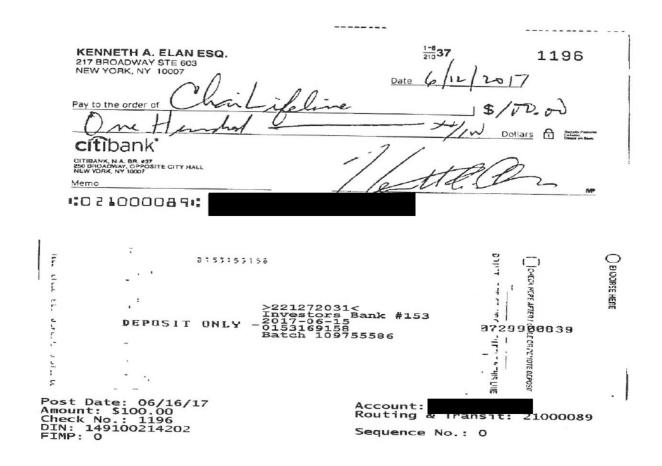
Statement Period: May 21 - Jun 21, 2016 Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

Check images for account #



Ck Date: 05/31/2016 Ck No: 1005 Amt: \$100.00

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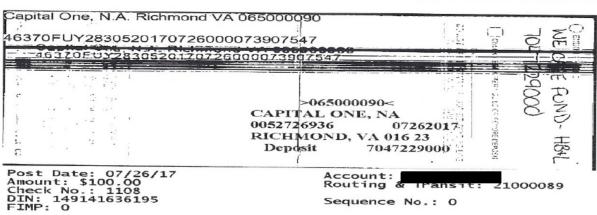
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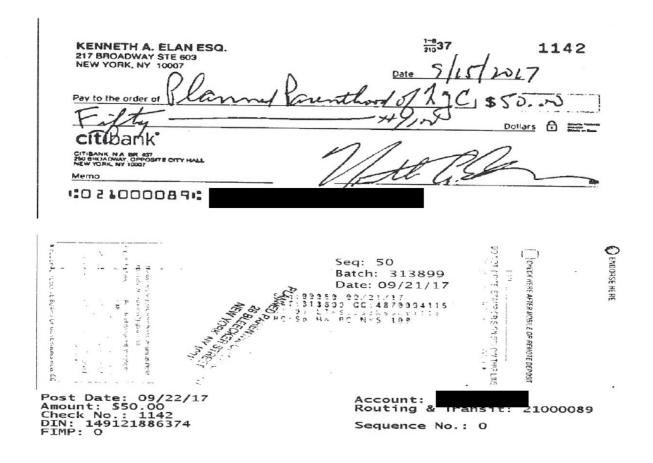
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Account: Routing & Transit: 21000089 Sequence No.: 0

#### Case 1:15-cv-00897-EJW Document 212 Filed 06/12/23 Page 26 of 46 PageID #: 10418

Account Page 5 of 8 Statement Period: Dec 13 - Jan 11, 2019

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Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

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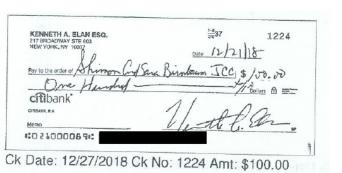
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Statement Period: Mar 13 - Apr 10, 2019 Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

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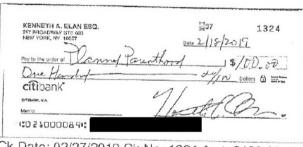
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Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

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Account Statement Period: May 11 - Jun 12, 2019

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Page 5 of 8

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Ck Date: 09/09/2019 Ck No: 1378 Amt: \$100.00

Account Page 3 of 6 Statement Period: Sep 13 - Oct 10, 2019

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Statement Period: Jun 11 - Jul 10, 2020 Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

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Page 5 of 8 Statement Period: Jul 11 - Aug 12, 2020

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Page 7 of 8 Statement Period: Sep 12 - Oct 13, 2020

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Ck Date: 10/09/2020 Ck No: 1550 Amt: \$100.00

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Page 5 of 8 Statement Period: Oct 14 - Nov 12, 2020

Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

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Ck Date: 10/27/2020 Ck No: 1557 Amt: \$50.00

Page 5 of 8

Account Statement Period: Nov 13 - Dec 10, 2020

Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

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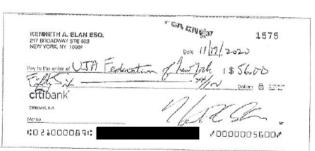
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Ck Date: 11/24/2020 Ck No: 1575 Amt: \$56.00

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Page 7 of 8 Statement Period: Jan 14 - Feb 10, 2021

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Page 7 of 8

Account Statement Period: Dec 11 - Jan 13, 2021

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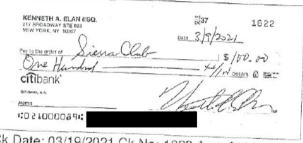
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Statement Period: May 13 - Jun 10, 2021 Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered Check images for account #

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Ck Date: 06/10/2021 Ck No: 1724 Amt: \$10.00

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Statement Period: Sep 14 - Oct 13, 2021 Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

Check images for account #

KENNETH A. ELAN ESQ. 14 VANDERVENTER AVE STE 115 PORT WASHINGTON, NY 11050 1786 Dollars @ Bar citibank' Меттр :PB00001503 Ck Date: 10/12/2021 Ck No: 1786 Amt: \$100.00

KENNET H: 45-CW-00897-EJW Document 212 Filed 06/12/23 Page 45 of 46 Page ID #: 10437 ess

Account Page 5 of 8 Statement Period: Oct 14 - Nov 10, 2021

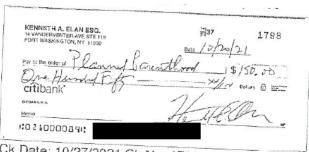
001/R1/20F000

Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered

Check images for account #

KENNETH A. ELAN ESO. 3G = DONATION IN VANDETIVENTER AVESTE 115 3G F CAN ACCOUNTY WASHINGTON, NY 11866 3G F CAN ACCOUNTY KENNETH A. ELAN ESQ. 1788 Date 10/1/2021 Ray to tree crose of Temple Bathel Butherhood \$ 72.00 citibank Memo :0210000894

Ck Date: 10/18/2021 Ck No: 1788 Amt: \$72.00



Ck Date: 10/27/2021 Ck No: 1798 Amt: \$150.00

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Statement Period: Nov 11 - Dec 10, 2021 Note: Imaged checks can be used as evidence of payment. Imaged checks appear in numeric order. Non-numbered checks will appear first. Non-check items will appear last.

Account

Check images for account #

KENNETH A, ELAN ESQ. 14 VANDERVENTER AVE STE 115 PORT WASHINGTON, NY 11000	H-137	1814
Per to the order of Friends of	Jew York Public Lihon &	(D. 07)
citibank'	X4/01	Dollars & Barr
Memo	11 the	3
::031000089::	112-110-26	2 10

Ck Date: 11/30/2021 Ck No: 1814 Amt: \$50.00



Ck Date: 12/07/2021 Ck No: 1818 Amt: \$50.00